MANDATE

S.D.N.Y.-N.Y.C.
08-cv-3653
Jones, J.

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of July, two thousand thirteen.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: June 12, 2014

Present:

Dennis Jacobs,
Chief Judge,
Rosemary S. Pooler,
Robert A. Katzmann,
Circuit Judges.

JAMES J. HAYES, INDIVIDUALLY,
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff-Appellant,

v. 13-635

CERTIFIED CLASS,

Plaintiff-Appellee,

v.

HARMONY GOLD MINING COMPANY LIMITED,

Defendant-Appellee,

BERNARD SWANEPOL, NOMFUNDO QANGULE,

Defendants.

Appellees, through counsel, move for dismissal of the appeal, for monetary sanctions pursuant to Federal Rule of Appellate Procedure 38, and for the imposition of a leave-to-file sanction. Upon

MANDATE ISSUED ON 06/12/2014

due consideration, it is hereby ORDERED that the motions to dismiss the appeal are construed as motions for summary affirmance, *see United States v. Monsalve*, 388 F.3d 71, 73 (2d Cir. 2004), and, as construed, are GRANTED. *See Johnson v. Univ. of Rochester Med. Ctr.*, 642 F.3d 121, 125 (2d Cir. 2011) (district court orders granting or denying a motion for relief from a final judgment pursuant to Fed. R. Civ. P. 60(b) are reviewed for abuse of discretion).

It is FURTHER ORDERED that the motions for monetary sanctions are DENIED. *See In re 60 East 80th St. Equities, Inc*., 218 F.3d 109, 119 (2d Cir. 2000) (a clear showing of bad faith may be required to impose Rule 38 sanctions).

It is FURTHER ORDERED that Appellant is hereby warned that the continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers regarding appeals of class action securities fraud claims in the Harmony Gold litigation will result in the imposition of sanctions, which may include a leave-to-file sanction requiring Appellant to obtain permission from this Court prior to filing any further submissions in this Court. *See In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993); *Sassower v. Sansverie*, 885 F.2d 9, 10 (2d Cir. 1989).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

UNITED STATES SECOND CIRCUIT COURT OF APPEALS

Catherine O'Hagan Wolfe

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

UNITED STATES SECOND CIRCUIT COURT OF APPEALS

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